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Third Party Communication: None

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From:

Sent: 6/24/2014

To:

Cc:

Bcc:

Subject: Re: Case

Hi,

Thanks for calling me earlier this afternoon. As promised, below are some authorities to consider on the issues of whether section 905(c) applies to a refund of a section 901 tax and of whether the statute of limitations under section 6501(a) has expired and therefore no assessment can be made.

Section 905(c)(1) provides rules for adjustments to foreign income taxes, but the provisions of section 905(c) are not limited to accrued foreign taxes claimed as a deemed paid credit under section 902 or 960. Although sections 905(c)(1)(A) and (B) specifically address accrued taxes, section 905(c)(1)(C) states that, if any tax is refunded in whole or in part, the taxpayer must notify the Secretary, who shall redetermine the amount of the tax for the year or years affected. Thus, if there is a refund of a foreign tax that has been claimed as a credit under section 901, section 905(c) applies to redetermine the taxpayer's U.S. tax liability.

Also, under section 905(c)(2)(B), if accrued taxes are paid after the date 2 years after the close of the taxable year to which such taxes relate, how those taxes are taken into account depends on whether the taxes are claimed as a credit under section 902 or 960 (section 905(c)(2)(B)(i)(I)) or under section 901 (section 905(c)(2)(B)(i)(II)). In the latter case, a foreign tax redetermination of a tax claimed as a credit under section 901 is taken into account in the taxable year to which such taxes relate.

In addition, the regulations under section 905(c) provide rules for "adjustments to United States tax and to the pools of post-1986 undistributed earnings and post-1986 foreign income taxes as a result of a foreign tax redetermination." Section 1.905-3T(d) addresses the redetermination of United States tax liability, with section 1.905-3T(d)(1) specifically addressing "Foreign taxes paid directly by a United States person." As provided in that section, "If a foreign tax redetermination occurs with respect to foreign tax paid or accrued by or on behalf of a United States taxpayer, then a redetermination of

United States tax liability is required for the taxable year for which the foreign tax was claimed as a credit.” Section 1.905-3T(d)(2) provides rules for redeterminations of foreign taxes deemed paid under section 902 or 960, whether pooling adjustments or, if an exception applies, a redetermination of U.S. tax liability is required. Thus, different rules apply to a foreign tax redetermination, depending on whether the foreign income tax liability which is redetermined is claimed as a credit under section 901 or under either section 902 or 960.

You are correct that section 6511(d)(3)A) only applies to extend the statute of limitations for claiming a refund or credit. However, there is also an exception on the assessment side; section 6501(c)(5) provides an exception to the three year statute of limitations on assessment under section 6501(a) by cross reference to section 905(c). Below are several different authorities which state that there is the unlimited statute of limitations under the authority of sections 905(c) and 6501(c)(5):

In *Pacific Metals Corp. v. Commissioner*, 1 T.C. 1028 (1943), the Tax Court held that the predecessor of section 905(c) indefinitely postponed the period of limitations on assessment during the time that the taxpayer had not ascertained the correct amount of the foreign tax owed and had not informed the Service of the correct amount.

In *Texas Co. (Caribbean) Ltd. v. Commissioner*, 12 T.C. 925 (1949), acq., 1949-2 C.B. 3, the Tax Court noted that public policy generally requires a fixed period of limitations on assessment of tax and held that the Service's power to recompute tax liability under the predecessor of section 905(c) of the Code should be limited to the two general situations covered by the statute: (1) when the amount of foreign tax paid differs from the amount claimed as a credit, and (2) when the taxpayer receives a refund of foreign tax that the taxpayer previously claimed as a credit. Thus, the Service may assess an additional United States income tax liability after the expiration of the normal 3-year period of limitations in section 6501(a) with respect to substantive foreign tax adjustments, but not with respect to computational errors associated with the taxpayer's United States income tax return. (NOTE: the 1997 amendments to section 905(c) and the 2007 regulations under that section expand the types of adjustments to foreign taxes that fall within section 905(c).)

Rev. Rul. 71-454, 1971-2 C.B. 294, states: “Section 905(c) of the Code provides in effect that there is no statute of limitations for the redetermination of the amount of Federal income taxes due upon adjustment of foreign income taxes by foreign tax authorities if the taxpayer overpaid the foreign tax and as a consequence received a refund, but there is a 10-year period of limitations for such redetermination if the taxpayer has underpaid the foreign tax and desires to increase the amount of the foreign tax credit.”

In Rev. Rul. 72-525, 1972-2 C.B. 443 (clarified by Rev. Rul. 83-80, 1983-1 C.B. 130), a domestic parent corporation had claimed a credit on its 1964 return under sections 901 and 902 of the Code for foreign income taxes deemed paid by it with respect to its foreign subsidiary. In ascertaining the correct amount of the credit, the taxpayer made a computational error that went unchallenged by the Service throughout the normal period

of limitations on assessment. In 1971, after the normal period of limitations under section 6501(a) had expired, the subsidiary received a refund of a portion of the foreign income taxes it had paid in 1964. This foreign tax refund resulted from a loss carryback to 1964. In discussing the holding in *Texas Co. (Caribbean)*, Rev. Rul. 72-525, at page 444, states: "Thus, additional assessments permitted under section 905(c) of the Code are limited to adjustments of foreign tax credits caused by factors which are not ascertainable either at the time of the computation of the credit originally claimed or within the period of limitations provided by section 6501(a) of the Code." Therefore, Rev. Rul. 72-525 holds, in part, that the Service was prohibited in 1971 from assessing additional United States income taxes as the result of the computational error by a domestic parent corporation on its 1964 return, although the Service was allowed to assess additional United States income taxes as the result of the foreign tax refund.

I am happy to discuss these Code sections and authorities with you, if you would like to give me a call tomorrow at the number below.